

REMARKS

This Amendment is filed in response to the Office Action dated July 30, 2003. Applicant appreciates the courtesies extended to Applicants' counsel in a recent telephone conversation concerning the status of the application. In response to the Office Action, Applicant has amended Claims 1-9 to more clearly recite the claimed invention. Further, Applicant has added new independent Claims 29-31 to recite further patentable features. Following this amendment, the application includes, twelve (12) independent claims and eighteen (21) total claims, with Claims 1, 2, 4, 5, 7, 8, and 29-34 being in independent form. Applicant respectfully submits that the claims of the application are patentable over the cited references. Therefore, Applicant respectfully requests reconsideration and allowance of the application.

I. Description of the Invention

In the previous Amendment, Applicant explained in detail the differences between the claimed invention and the system disclosed in '024 Shkedy patent. Specifically, Applicant described that the present invention provides a system based on a different type of sales model from that disclosed in the '024 Shkedy patent. Specifically, the system described in the '024 Shkedy patent is very similar to a Priceline.com scheme in which the user must first commit to a proposed item before the item is sent out for bid by suppliers. Once the item is accepted by a supplier based on a price or criteria set by the buyer, the deal is complete and the buyer is charged at the price set. The buyer is not provided with different purchasing options or packages that may be offered by the seller. Instead, the buyer only gets what he/she specifically requested and at the user's asking price.

The claimed invention is quite different from the systems and methods disclosed in the '024 Shkedy patent. Specifically, the claimed invention relates more to providing various offers to a user and then allowing the user to select the package that is right for them. This is beneficial to both the consumer and the supplier. Specifically, the consumer is not required to offer an initial price for a product. Therefore, the consumer does not have to be concerned with over

bidding on an item. Further, the consumer is not required to accept the item at the price offered by the seller.

In addition, the seller does not miss a potential sale because the consumer bid too low. Specifically, in the system of the '024 Shkedy patent, the consumer sets the price and the seller attempts to meet it. If consumer sets the bid too low, the seller may not be able to meet the price. For example, say the consumer placed a price they were willing to pay of \$100. However, the lowest the seller can go is \$105. It may be that the customer is will to pay the added \$5, but under the system of the '024 Shkedy patent this sale would not take place. On the other hand, because the system of the claimed invention does not require the customer to set the initial max value, the consumer can return a price that may be acceptable to both.

II. Independent Claims 1, 2, 4, 5, 7, and 8 Are Patentable

In response to this previous argument, the Office Action pointed to a section of the '024 Shkedy patent, which discloses an embodiment in which the user agrees to pay a penalty if they decide to opt out of the pool. This embodiment is discussed at col. 26, lines 30-64. The Office Action argues that this is equivalent to a "proposed response" as was recited in the claims. Specifically, the Office Action argues by not requiring the consumer to purchase the item by instead paying an opt out penalty fee that the system of the '024 Shkedy patent essentially proposes the product to the user. Applicant respectfully disagrees with this characterization of the prior art.

Specifically, Applicant argues just the opposite. If a consumer is required to pay a penalty to opt out, then the system is not proposing an item. Instead, the system is telling the consumer that he/she is bound by contract to buy the item, and that if they do not, they must pay a penalty. Applicant would like to draw attention to col. 2, lines 52-58 of the '024 Shkedy patent which states:

A key element in achieving success is the ability to bind the individual buyer to the pool before the purchase is made. If buyers could participate in the pool and only decide whether they wish to purchase the goods once they have

been given a price, it becomes impossible to guarantee the price since the volume changes depending on the number of buyers remaining in the pool.

Applicant submits that the main underlying premise of the '024 Shkedy patent is to commit the consumer to purchase the item prior to soliciting for orders. It states that this is a must. It is Applicant's contention that the opt out fee is a binding obligation that requires that the consumer commit to purchase the item. Even more importantly, Applicant argues that one skilled in art reviewing the '024 Shkedy patent as a whole would not see the opt out discussion as a "proposal" in light of the disclosure reproduced above that mandates that binding the customer prior to entrance into the pool is a must.

To clarify this point, Applicants have amended independent claims 1, 2, 4, 5, 7, and 8 to further high light the patentable differences between the claimed invention and the '024 Shkedy patent. Specifically, these claims all recite that the system and method attempt to fill the order without requiring the consumer to commit to purchase of the requested item. Further, the item is presented to consumer so that the consumer can decide whether to purchase the item or not. This is patentably different from the '024 Shkedy patent, which requires that the consumer commit to purchase prior to the system attempting to fulfill the order. To argue otherwise, would appear to fly in the face of the disclosure at col. 2, lines 52-58 which states that it is impossible to guarantee a price for the item if the consumer is not committed to purchase the item. In this sense, the opt out fee is essentially the binding fee required by the system to ensure that the consumer's decision to opt out does not affect the proposed price.

In light of the above, Applicant respectfully submits that the '024 Shkedy patent nowhere teaches or suggests attempting to fulfill the order independent of a commitment by the remote user to purchase the travel products as is recited in amended independent Claims 1, 2, 4, 5, 7, and 8.

Applicant submits that support for the amendments made to these claims can be found at page 17, line 4 thru page 18, line 10 of the specification. Specifically, this section discusses receipt of requests from consumers, aggregations of these requests, and

searching for vendors to fulfill the requests. There is no mention that the consumer is bound by their request. In fact, the specification states at page 17, line 16 thru page 18, line 2, that it is only after the system has returned responses from the search that it looks to see if the consumer wishes to commit to purchase. As such, the aggregation of requests by the claimed system is performed independent of a commitment by the remote user to purchase the item.

III. Independent Claims 29-31 Are Patentable

Independent Claims 29-31 recite that the consumer is provided with at least two responses from which to choose from. Applicant submits that this is not taught or suggested by the '024 Shkedy patent. Specifically, as discussed above, the '024 Shkedy patent requires that the consumer be committed to purchase of the item prior to the system attempting to get bids. As such, the '024 Shkedy patent would not provide the consumer with two or more responses to choose between. For all embodiments, the '024 Shkedy patent states that the consumer is only provided with the lowest bid. It nowhere teaches or suggests providing more than one response to consumer.

Applicant notes that a portion of the '024 Shkedy patent discloses allowing the consumer to select two alternate items, either of one they will accept. Specifically, the '024 Shkedy patent discloses an embodiment where the user is allowed to select two computers made by different manufacturers, either of which the consumer will accept. See '024 Shkedy patent, col. 7, line 59 – col. 8, line 5. Applicant notes, however, that the consumer is not provided a price quote for both computers. Instead, the consumer only receives a quote for lower priced of the two.

As discussed above, the ability to provide more than response to the consumer by the claimed invention provides a significant advantage over the system of the '024 Shkedy patent. Specifically, the consumer is provided with more than one choice. In this scenario, the consumer may choose a more expensive response, if it has more favorable terms. For example, if the items are plane tickets and the lowest priced ticket has a connecting flight, while a slightly higher priced ticket is a direct flight, the consumer may very well choose the higher priced response. This also aids the seller. Specifically, the seller does not have to be concerned with only being

- able to provide one response. Instead, the seller can provide a variety of different options to the consumer and the consumer can make a choice.

For the above reasons, Applicant respectfully submits that independent Claims 29-31 are patentable.

Applicant submits that Claims 29-31 are supported by the specification. For example, at page 8, lines 13-15, the specification states that the consumer receives any packages meeting her/his request.

IV. Independent Claims 32-34 Are Patentable

Independent Claims 32-34 have been added to recite another patentable feature of the present invention. Specifically, the claims recite that the system attempts to get bids for an order independent of setting a maximum price and receives bids from suppliers, where the price set by the supplier for the item is independent of maximum price set by the consumer. Applicant submits that there is more than adequate support in the specification for these claims. Specifically, in the various embodiments described in the application, the consumer merely sends a request and does not specify a maximum dollar amount nor is the seller bound by a maximum bid. Instead, each seller submits a proposed response with a dollar amount that the seller has set and the consumer is allowed to select from the different offerings from different suppliers based on the price offered by the suppliers as well as other factors.

The system of Claims 32-34 is advantageous in that it allows the consumer to check pricing for the request without having to first commit to a maximum price. Specifically, under the prior art systems, the consumer must input a maximum price at the outset. This in some ways may tip the consumer's hand. Specifically, the supplier is then aware of the consumer's maximum price and may seek to set their price just below or at the maximum price, even though the seller may have been willing to sell the item for less. Further, by not requiring a maximum price, the consumer may have access to price quotes from sellers that are above a maximum value that the consumer would have set. For example, under the conventional system, a consumer will not see an offering from a seller that may only be a couple of dollars higher than the maximum bid, which the consumer may have considered if she/he had known about the

- offer. Under the claimed system, the consumer can see all bids and make a decision based on the knowledge of all bids.

Applicant respectfully submits that none of the cited references, taken either individually, or in combination, teaches or suggests the following recitations of the Claims 32-34:

providing aggregated information to a plurality of suppliers, each capable of supplying the item without also providing remote user identification information from the request, wherein said providing step provides the aggregated information to the suppliers independent of any predetermined maximum price for the items;

receiving at least one proposed response from at least one of the suppliers, including a proposal for providing the item to the remote user, wherein a proposed price for the items is set by the supplier and independent of any predetermined maximum price; and

providing the proposed response to the remote user based on the remote user identification information, whereby the remote user can determine whether to commit to purchasing the item based at least on the price set by the supplier.

In this regard, the '024 Shkedy patent requires that the consumer accept a maximum offer price before the consumer is entered into the pool. No where does it teach or suggest that the consumer can be entered into the pool without accepting the maximum offer price. Further, no where does the '024 Shkedy patent teach or suggest providing the aggregated consumer requests to supplier independent of a maximum price, setting of price by supplier independent of a maximum price, and committal of the buyer based on price offered by seller. As such, Applicant respectfully submits that Claims 32-34 are patentable.

CONCLUSION

In view of the amended specification, amended claims, added claims, and the remarks presented above, it is respectfully submitted that all of the present claims of the application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper.

However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

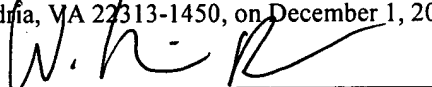


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